IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 600

RED LION BROADCASTING CO., INC., ET AL., *Petitioners,*

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL., *Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY MEMORANDUM ON BEHALF OF PETITIONERS

This case involves the application of the Federal Communications Commission's "Fairness Doctrine" to a particular broadcast in a specific factual context, at a time when the "Fairness Doctrine" constituted informal and loosely defined Commission policy. The judgment of the Circuit Court of Appeals was entered June 13, 1967. Thereafter, on July 5, 1967, the Com-

mission issued a Memorandum Opinion and Order, 32 Fed. Reg. 10303, amending Part 73 of its Rules and Regulations and adding a new rule purporting to define the obligations of any broadcast licensee when a personal attack is broadcast over its facilities.[1] The validity of the new rule has been challenged on constitutional and other grounds by Columbia Broadcasting System, Inc., National Broadcasting Company, Inc., and Radio Television News Directors Association in proceedings now pending in the United States Circuit Court of Appeals for the Seventh Circuit.[2]

In their briefs amicus curiae filed herein, Columbia Broadcasting System, Inc. and National Broadcasting Company, Inc. suggest that the Court hold this case until the decision of the related case now pending in the United States Court of Appeals for the Seventh Circuit, so that the two cases may be considered together. The petitioners concur in this suggestion.

The case at bar concerns the validity of the Commission's personal attack theories in a specific factual context. The proceedings in the Circuit Court of Appeals for the Seventh Circuit present for consideration the validity of rules that will govern all future applications

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[1] The new rule is printed as Appendix A to the brief filed herein by National Broadcasting Co., Inc., as amicus curiae, and at pages 2a-4a in the amicus curiae brief filed by Columbia Broadcasting System, Inc.

[2] Radio Television News Directors Association, et al. v. United States (No. 16,369); Columbia Broadcasting System, Inc. v. United States (No. 16,498); and National Broadcasting Co. v. United States (No. 16,499). These cases have been consolidated. Copies of the brief and exhibit filed by Columbia Broadcasting System, Inc., in the Seventh Circuit were filed with this Court under date of November 21, 1967.

of the personal attack doctrine. It would therefore seem that to avoid piecemeal litigation and to enable the Court to view the entire matter in perspective the two cases should be considered together. It is particularly important, we submit, that there be a definitive resolution of the issue presented, in view of the concession by the respondents that "the issue is fundamental and of practical importance to the day-to-day operation of the broadcasting industry. * * *".[3]

Respectfully submitted,

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[3] Respondent's Brief in opposition to petition for certiorari, page 9.